

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #6	CCRB Case #: 201901824	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/27/2019 8:45 PM	Location of Incident: § 87(2)(b)	Precinct: 48	18 Mo. SOL 8/27/2020	EO SOL 4/13/2021	
Date/Time CV Reported Thu, 02/28/2019 10:50 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/28/2019 10:50 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM David Ramirez	25053	962711	048 PCT
2. POM Rafael Santos	04863	964754	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Ramirez	Discourtesy: Police Officer David Ramirez acted discourteously toward § 87(2)(b)	§ 87(2)(b)
B.POM Rafael Santos	Abuse: Police Officer Rafael Santos threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
C.POM David Ramirez	Abuse: Police Officer David Ramirez threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.POM Rafael Santos	Abuse: Police Officer Rafael Santos threatened to arrest § 87(2)(b)	§ 87(2)(b)
E.POM Rafael Santos	Discourtesy: Police Officer Rafael Santos acted discourteously toward § 87(2)(b)	§ 87(2)(b)
F.POM David Ramirez	Discourtesy: Police Officer David Ramirez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G.POM David Ramirez	Abuse: Police Officer David Ramirez threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

Case Summary

On February 28, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On February 27, 2019, at approximately 8:45 p.m., § 87(2)(b) walked to his home, located at § 87(2)(b) in the Bronx. PO David Ramirez and PO Rafael Santos, of the 48th Precinct, drove by § 87(2)(b) in a marked police vehicle. PO Ramirez stated over the loud speaker to § 87(2)(b) “Yer, I love you, bro. I’ll be back, bro,” (**Allegation A: Discourtesy**, § 87(2)(g)). PO Ramirez and PO Santos drove away, but then returned before § 87(2)(b) entered § 87(2)(b). § 87(2)(b) approached the driver side window of the officers’ vehicle and asked PO Ramirez why he made those statements over the loud speaker. PO Ramirez turned up the volume of the music playing in the police vehicle, interrupting § 87(2)(b) (**subsumed under Allegation A**). PO Ramirez told § 87(2)(b) to step away from the vehicle. PO Santos pointed two fingers at § 87(2)(b) and jerked them upwards, imitating shooting with a gun (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Ramirez and PO Santos exited their police vehicle. PO Ramirez and PO Santos threatened to arrest § 87(2)(b) for disorderly conduct (**Allegation C and D: Abuse of Authority**, § 87(2)(g)). PO Santos told § 87(2)(b) “I love you too bro,” (**Allegation E: Discourtesy**, § 87(2)(g)). PO Ramirez told § 87(2)(b) “Like I said, you can fucking leave, or you can get arrested for fucking disorderly conduct, (**Allegation F: Discourtesy**, § 87(2)(g); **subsumed under Allegation C**). PO Ramirez told § 87(2)(b) “Get the fuck out of here before I put two holes in your chest (**subsumed under Allegation F; Allegation G: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was not arrested or issued a summons.

§ 87(2)(b) provided two videos of this incident (Board Reviews 01-04). BWC was received from NYPD Legal for PO Ramirez (Board Review 05 and 06) and PO Santos (Board Review 07 and 08).

§ 87(2)(b)

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Findings and Recommendations

Allegation (A) Discourtesy: Police Officer David Ramirez acted discourteously towards

§ 87(2)(b)

The first video provided by § 87(2)(b) (Board Review 01 and 02) captures an officer saying, “I love you, bro,” over the loud speaker of a police vehicle while driving past § 87(2)(b). The second video provided by § 87(2)(b) (Board Review 03 and 04) captures § 87(2)(b) asking PO Ramirez why PO Ramirez followed him and said he loved him. At 00:30 in the video, PO Ramirez turns up the volume of the music in the police vehicle to a loud volume for approximately 30 seconds.

§ 87(2)(b) (Board Review 10) walked to his home located at § 87(2)(b) in the Bronx. PO Ramirez and PO Santos, who he recognized from prior interactions, drove past him. A voice, that he recognized as PO Ramirez’s, shouted over the police vehicle’s loud speaker, “Yer, I love you, bro. I’ll be back, bro.” PO Ramirez and PO Santos drove away, but returned before § 87(2)(b).

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Rafael Santos threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that, while he asked PO Ramirez why he said, “I love you,” PO Santos pointed two fingers at him and jerked them upward, imitating the shooting of a gun.

PO Santos denied that he pointed two fingers at § 87(2)(b) and jerked them upward to imitate shooting a gun. PO Santos denied that he threatened to shoot § 87(2)(b) or threaten him with any force.

PO Ramirez’s testimony was consistent with PO Santos’ testimony.

The video provided by § 87(2)(b) did not capture PO Santos gesture towards § 87(2)(b) in a way that imitated shooting a gun. Nor did any video capture PO Santos threaten § 87(2)(b) with force in any way.

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer David Ramirez threatened to arrest § 87(2)(b)

§ 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Rafael Santos threatened to arrest § 87(2)(b)

§ 87(2)(b)

It is undisputed that PO Ramirez and PO Santos threatened to arrest § 87(2)(b) for disorderly conduct.

The second video taken by § 87(2)(b) shows that § 87(2)(b) is standing on the sidewalk outside the officers’ vehicle, asking why they followed him and why PO Ramirez told him that he loved him. § 87(2)(b)’s hand never enters the window of the police vehicle, which is only partially rolled down. PO Ramirez tells § 87(2)(b) to back up twice, prior to turning up the volume of the music. PO Ramirez and PO Santos both exit their vehicle and threaten to arrest § 87(2)(b) for disorderly conduct.

PO Ramirez’s and PO Santos’ BWC footage both capture the officers exiting their vehicle and telling § 87(2)(b) that he can leave or else they will arrest him for disorderly conduct.

§ 87(2)(b) stood approximately two feet away from the police vehicle while he spoke with the officers. § 87(2)(b) stepped back from the police vehicle after the second time PO Ramirez told him to. PO Ramirez and PO Santos exited their vehicle. PO Ramirez told § 87(2)(b) “We could arrest you for disorderly conduct, or you can have a lovely night.” PO Santos also told § 87(2)(b) that the officers could arrest him for disorderly conduct.

PO Ramirez stated that § 87(2)(b) stood close to the police vehicle and placed his hand inside the driver side window, as he held his cell phone. § 87(2)(b)’s proximity to the vehicle made PO Ramirez feel unsafe. PO Ramirez instructed § 87(2)(b) to step away from the vehicle multiple times, but could not remember how many times. PO Ramirez and PO Santos exited their vehicle. PO Ramirez did not think that § 87(2)(b) ever stepped back from the vehicle prior to when the officers exited the vehicle. On the sidewalk, PO Ramirez and PO Santos told § 87(2)(b) to leave the location a couple of times for safety purposes, but PO Ramirez could not remember how many times they instructed § 87(2)(b) to leave. PO Ramirez told § 87(2)(b) that he would be arrested for disorderly conduct if he did not leave the location. § 87(2)(b) was disorderly because he stood near the vehicle. PO Ramirez also felt that § 87(2)(b) had been aggressive during their two prior interactions. Aside from § 87(2)(b)’s physical proximity to the officers and PO

Ramirez's past interactions with him, § 87(2)(b) did not do anything else on the date of this incident that PO Ramirez considered disorderly.

PO Santos' statement was mostly consistent with PO Ramirez's statement. PO Santos also stated that § 87(2)(b) stuck his phone inside the police vehicle. § 87(2)(b) could have been arrested for disorderly conduct because he stuck his phone inside the vehicle. PO Santos did not recall for which subsection of disorderly conduct that § 87(2)(b) could have been arrested.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: he engages in fighting or in violent, tumultuous or threatening behavior; or he makes unreasonable noise; or in a public place, he uses abusive or obscene language, or makes an obscene gesture; or without lawful authority, he disturbs any lawful assembly or meetings of persons; or he obstructs vehicular or pedestrian traffic; or he congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or he creates a hazardous or physically offensive condition by any act which serves no legitimate purpose, N.Y. CLS Penal Section 240.20, Disorderly Conduct (Board Review 15).

The video presented by § 87(2)(b) shows that § 87(2)(b)'s hand did not enter the police vehicle, in contrast with officer testimony that his hand entered the window of their vehicle. While it was undisputed that the officers instructed § 87(2)(b) to step away from the vehicle and leave the location, the video confirmed § 87(2)(b) was on the sidewalk outside of the officers' vehicle, and asked them about why they had started speaking to him. At no point during the video was § 87(2)(b) threatening the officers, causing public alarm, obstructing pedestrian or vehicular traffic, or creating a hazardous condition. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Discourtesy: Police Officer Rafael Santos acted discourteously toward

§ 87(2)(b)

PO Santos BWC captures § 87(2)(b) walking away after PO Santos and PO Ramirez threaten to arrest him for disorderly conduct. As § 87(2)(b) is walking away, he tells PO Santos and PO Ramirez, "You look so cute, I love you." PO Santos responds, "I love you too, bro."

§ 87(2)(b) did not testify that PO Santos stated, "I love you too, bro."

PO Santos initially did not recall telling § 87(2)(b) "I love you too bro," but after watching the video confirmed that he did. PO Santos did not recall why he made the statement to § 87(2)(b)

Officers are to interact with member of the public in a professional manner, Patrol Guide Procedure 203-09, "Public Contact – General" (Board Review 14). Officers are to "maintain a higher standard of integrity than is generally expected of others because so much is expected of" them, and to "value human life, respect the dignity of each individual and render [their] services with courtesy and civility." Patrol Guide Procedure 200-02, "Mission and Values of the New York City Police Department" (Board Review 21).

It was undisputed that PO Santos stated to § 87(2)(b) "I love you too, bro." While this statement by itself is laudable, given the full context of the incident this statement was not designed to deescalate the situation or improve the relationship between § 87(2)(b) and PO Ramirez, but to further aggravate § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (F) Discourtesy: Police Officer David Ramirez spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer David Ramirez threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that, when he walked away from the officers, PO Ramirez told him, “You can fucking leave, or you can get arrested for fucking disorderly conduct.” § 87(2)(b) replied, “It’s pretty fucked up that two police officers who are supposed to be serving and making me feel safe, are making me feel scared.” PO Ramirez responded, “Just get the fuck out of here before I put two holes in your chest.” § 87(2)(b) interpreted this to mean that PO Ramirez was going to shoot him. § 87(2)(b) went inside § 87(2)(b) and did not have any further interaction with the officers.

§ 87(2)(b)’s phone died before PO Ramirez made these statements to him, so they were not captured on § 87(2)(b)’s video.

PO Ramirez denied that he ever used profanity while speaking with § 87(2)(b). PO Ramirez did not recall telling § 87(2)(b) “You can fucking leave, or you can get arrested for fucking disorderly conduct.” PO Ramirez denied that he threatened § 87(2)(b) with force and denied that he said, “Just get the fuck out of here before I put two holes in your chest.”

PO Ramirez turned off his BWC prior to when these statements were allegedly made, and therefore his BWC did not capture these allegations.

PO Santos’ statement was consistent with PO Ramirez’s statement.

In his BWC video, PO Santos walked to the passenger side of the police vehicle after he threatened to arrest § 87(2)(b). Any additional conversation between § 87(2)(b) and PO Ramirez was inaudible and therefore the video did not capture these allegations.

Officer and civilian testimony is inconsistent regarding whether or not PO Ramirez used profanity and threatened § 87(2)(b) with the use of force. § 87(2)(g)

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Civilian and Officer CCRB Histories

- § 87(2)(b)
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§ 87(2)(b)
- PO Ramirez has been a member of service for two years and has been a subject in 9 cases and 30 allegations (Board Review 17).
 - CCRB case number 201801146 involved a force allegation and was closed pending litigation.

- § 87(2)(b) [REDACTED]
- CCRB case number 201900416 involved a vehicle search allegation, discourtesy allegation, offensive language allegation, a search of recording device allegation, and a photography allegation.
- § 87(2)(b) [REDACTED]
- CCRB case number 201901103 involved allegations of threat of force, discourtesy, refusal to provide name, and refusal to provide shield number, all of which were unsubstantiated. § 87(2)(g), § 87(4-b) [REDACTED]
- CCRB case number 201902570 involved a vehicle stop allegation.
- § 87(2)(b) [REDACTED]
- CCRB case number 201906210 involved two threat of arrest allegations, a threat to notify ACS allegation, two discourtesy allegations, and one threat to remove to hospital allegation.
- PO Santos has been a member of the service for one year and has been a subject in five cases and 14 allegations (Board Review 18).
 - § 87(2)(b) [REDACTED]
 - CCRB Case number 201901103 involved allegations of a vehicle stop, threat of force, and failure to provide a business card.
 - This case is also in Panel 11A-2019.
 - CCRB case number 201902570 involved a physical force allegation.
 - CCRB case number 201905179 involved a sexual misconduct allegation.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 29, 2019, the New York City Office of the Comptroller had no record of a Notice of Claim being filed regarding this incident (Board Review 19).
- § 87(2)(b) [REDACTED]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date